



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148671

PRELIMINARY RECITALS

Pursuant to a petition filed April 09, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability, now known as the Office of the Inspector General (OIG), in regard to Medical Assistance (MA), a hearing was held on May 23, 2013, at Milwaukee, Wisconsin. The record was held open to allow the OIG an opportunity to review additional information submitted by the petitioner at hearing. The OIG provided its response on July 8, 2013 indicating it would not change its original decision to modify the prior authorization request.

The issue for determination is whether the OIG correctly modified the number of personal care worker (PCW) hours for petitioner pursuant to her prior authorization (PA) request.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: written submittal of Kelly Townsend, RN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 30 years old and certified for MA.

2. Petitioner lives with her family and does not regularly attend activities outside of her home. She is diagnosed with Spina Bifida, Juvenile Rheumatoid Arthritis and Systemic Lupus Erythematosus, Fibromyalgia, Sjorgren's Syndrome and Osteoporosis.
3. On December 18, 2012 a Personal Care Screening Tool (PCST) was conducted by a nurse from Independence First (IF) for petitioner. The amount of time allocated under the PCST was 105 units (26.25 hours) per week. That PCST showed that:
 - a. For bathing, she is unable to effectively participate in bathing and is totally bathed by another person.
 - b. She depends entirely on another person to dress her upper and lower body twice daily.
 - c. That it takes ½ hour to apply compression stockings to her daily.
 - d. She depends entirely on another person for grooming twice daily.
 - e. She feeds herself but requires assistance with meal set up and preparation.
 - f. For mobility it states that she is able to move about by herself but requires daily intermittent supervision or cueing. She uses a motorized wheelchair but slides down in her chair and requires assist in getting back up in the chair, as well as requiring assist with repositioning her legs because her foot sticks out and can catch on doors and tight spaces.
 - g. She needs physical help from another person for incontinence care 4 times daily.
 - h. For transfers, she needs help from another person with the use of a mechanical lift (Hoyer) when transferring daily.
 - i. For medication management, petitioner was found to need the physical help of another twice daily.
 - j. Time was also requested for the medically oriented tasks (MOTs) for Range of Motion (ROM) twice per day, and a cecostomy bowel program 1 time per day, three days per week.
 - k. No behaviors or medical conditions were noted as interfering with the PCW's assistance with cares.
 - l. IF also requested additional time for services incidental to task.
4. On January 7, 2013, IF requested prior authorization on petitioner's behalf for 56 hours/224 units per week of PCW services and 7 hours/28 units per week of PCW travel time (PA # [REDACTED]) to begin March 5, 2013.
5. On March 4, 2013 the OIG modified the original requested hours for PCW services and granted 48.75 hours/195 units of PCW services only. No PCW travel time was allowed as petitioner's PCW lives with her. The OIG also allowed 96 Pro Re Nata (PRN) units yearly.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool, a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The OIG modified the PA after its review of the PA and its supporting documents. The explanation for the time allowed was set forth in its summary statement prepared for the instant hearing. See Exhibit 1. At hearing, petitioner requested additional time for toileting (catheterization), medication administration, compression stockings, skin care and services incidental to task to allow for cleaning of petitioner's room because of her allergies. Additional information was received post-hearing to allow petitioner the opportunity to verify diagnoses and prescriptions or orders, which was then forwarded to the OIG for review.

The petitioner was represented at hearing in large part by her mother/caregiver who clearly wants the best for her daughter. With respect to the catheterization they described petitioner requiring changes 8 times daily due to a spasming bladder. The OIG questioned the practice even upon review of the new information because there is no medical documentation about the procedure and no doctor's orders for same. In addition, the Wisconsin Administrative Code specifically states this is not a covered personal care service under Wis. Adm. Code §DHS 107.112(4)(g)1. As a specifically stated rule on this prohibits coverage for those cares, I cannot deviate from that.

With respect to the medication administration, the OIG identified the PCST's attached medication list as well as that provided post-hearing, and again, there is a lack of information to show that petitioner requires the frequency of medication assistance as testified to at hearing. Those medications that are listed as PRN (on an as needed basis) were considered through the OIG's award of PRN units. I will not disturb that determination. IF may file an amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours if the time allowed is not sufficient.

The compression stockings and skin care requests are also still lacking in the petitioner's current information and orders from her doctor(s). There is no question that the rules require doctor's orders to verify that the PCW services are so authorized. See Wis. Adm. Code §§DHS 107.112(1), 105.17(2)(b)2, and 107.02(2m). Without the proper orders, the MA program cannot authorize hours for those cares.

Finally, with respect to the services incidental for cleaning petitioner's room, I cannot add any time for this task. The OIG allowed the maximum one-fourth time for services incidental to task on this PA, which is to cover services such as "light cleaning in essential areas." The OIG commented that petitioner is also a participant in the IRIS program which does provide supportive home care services such as house cleaning services. I agree that she should seek coverage for those services through that program which allows it.

In the end, the problem with petitioner's case largely stems from the Screening Tool as filled out by the provider and its supporting documents. In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that all of the requested PCW services were medically necessary, and technically I am reviewing the OIG's determination. I suggest that the petitioner, her provider(s), and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time.

I therefore must conclude that the OIG was correct in its modification of the PA. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. As stated above, IF may be able to file another amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours, if indeed the PRN allowed does not accomplish that. An estimated time schedule provided by petitioner's mother could help in showing the OIG the hours needed, what specific ADLs require assistance and what specific assistance is provided, and what limitations petitioner experiences that require assistance. This is not intended to diminish the challenges petitioner and her family face, but rather to explain that the documentation must be there to support the requested services.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly modified petitioner's request for PCW hours as the preponderance of the evidence submitted did not show the medical necessity of the services.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

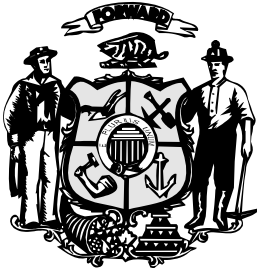
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of July, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 12, 2013.

Division of Health Care Access And Accountability